

From: [Hirsch, Lawrence](#)
To: [Vidales, Rene A.](#)
Subject: RE: Soitec Franchise Agreement
Date: Wednesday, June 05, 2013 8:10:26 AM
Attachments: [Franchise Agreement.pdf](#)
[image001.png](#)

Hi Rene,

Attached is the existing Franchise Agreement between the County and SDG&E. Please let me know if I can be of further assistance.

Lawrence

Lawrence M. Hirsch

Utilities Coordinator

CIP Project Development

Department of Public Works

Phone: 858.694.2215

Fax: 858.694.2499

E-mail: lawrence.hirsch@sdcounty.ca.gov

From: Vidales, Rene A.
Sent: Wednesday, June 05, 2013 7:24 AM
To: Hirsch, Lawrence
Subject: FW: Soitec Franchise Agreement

Hello Lawrence,

An applicant is looking for a template or some language to help in drafting a Franchise Agreement for placing a private utility underground within the public right-of-way. Do you have any references that may help them?

Thank you,

René A. Vidales

PE, LEED Green Assoc, ENV SP, STP, M.ASCE

Civil Engineer, Land Development

Planning and Development Services | *County of San Diego*

office: 858.694.3246

From: Sinsay, Edwin M
Sent: Tuesday, June 04, 2013 9:59 AM
To: Vidales, Rene A.
Subject: RE: Soitec Franchise Agreement

Rene,

Please contact Lawrence Hirsch and see if he has a Franchise Agreement that can be used. Since he is the utility coordinator he should be involved with this.

Thanks,

Ed

From: Vidales, Rene A.
Sent: Tuesday, June 04, 2013 9:10 AM
To: Sinsay, Edwin M
Subject: FW: Soitec Franchise Agreement

Ed,

The developer from the Tierra Del Sol project (3300-12-010 / 3600-12-005 / 3921-77-046-01) is looking for a template for the Franchise Agreement for undergrounding their gen-tie within public right-of-way. Per Tom Bosworth's response below there isn't one. How should they proceed?

The Draft Condition from May 2013 for the Tierra del Sol project is shown below. Project Planning is meeting with the applicant on Wednesday, June 5.

Thanks,

René A. Vidales

PE, LEED Green Assoc, ENV SP, STP, M.ASCE

Civil Engineer, Land Development

Planning and Development Services | *County of San Diego*

office: 858.694.3246

ENCROACHMENT PERMIT/FRANCHISE AGREEMENT: [PDS, LDR] [MA].

INTENT: In order to allow the placement of the 138kV generation tie line within the County right-of-way and in accordance with the County of San Diego Public Road Standards, a Franchise agreement or an Encroachment permit shall be obtained.

DESCRIPTION OF REQUIREMENT: Any transmission facility within County ROW shall be undergrounded and shall meet or exceed the requirements set forth in the San Diego County Design Standards and SD Area Regional Standard Drawings M-15, M-22, 23 and to the satisfaction of [PDS, LDR]. An encroachment permit shall be obtained from Construction/Road right-of-way Permits Services Section, for the improvements to be made within the public right-of-way. A copy of the permit and evidence from the issuing agency that all requirements of the permit have been met shall be submitted to the [PDS, LDR]. **DOCUMENTATION:** The applicant shall obtain the encroachment permit and provide a copy of the permit, proof of payment, and evidence that all the requirements of the permit have been met, to the [PDS, LDR]. **TIMING:** Prior to construction of anything within the County right of way, the permit shall be obtained. **MONITORING:** The [PDS, LDR] shall review the permit for compliance with this condition and the applicable improvement plans, and implement any conditions of the permit in the County improvement plans.

From: Gungle, Ashley
Sent: Monday, June 03, 2013 2:08 PM
To: Vidales, Rene A.
Subject: FW: Soitec

Rene,

Can you please route this through your Land Development chain of command as necessary?

Please let me know if any additional comments need to be provided at this time. We are meeting with the applicant on Wednesday.

Thanks,

Ashley

From: Bosworth, Thomas L
Sent: Monday, June 03, 2013 2:03 PM
To: Waterman, Ryan R.
Cc: Smith, Allison C.; Patrick BROWN; Gungle, Ashley; Robinson, Michael
Subject: RE: Soitec

Ryan,

We don't have a current template. We need to get this routed to Planning and Development Services and Department of Public Works staff so that they can weigh in on the proposal. Ultimately, these departments will be responsible for facilitating the means by which your client may access County right-of-way. We will copy PDS and DPW staff as a means of facilitating this discussion for you.

Sincerely,
Tom Bosworth

From: Waterman, Ryan R. [<mailto:RRWATERMAN@stoel.com>]
Sent: Monday, June 03, 2013 12:18 PM
To: Bosworth, Thomas L
Cc: Smith, Allison C.; Patrick BROWN
Subject: Soitec

Tom,

We are beginning the initial stages of drafting a franchise agreement for your consideration for Soitec's Tierra del Sol generation tie-line, about a mile of which is proposed for underground placement in the County right-of-way along Tierra del Sol Road.

Do you have any ordinance templates that you would like us to start working from? We would like to start with what you would start with.

I'm cc'ing here my colleague, Allison Smith, who is working on the draft franchise agreement with me.

Best regards,

Ryan R. Waterman

STOEL RIVES LLP | 12255 El Camino Real, Suite 100 | San Diego, CA 92130
Direct: (858) 794-4114 | Mobile: (619) 341-4651 | Fax: (858) 794-4101
rrwaterman@stoel.com | www.stoel.com

Subscribe to our Blog at www.californiaenvironmentallawblog.com

This email may contain material that is confidential, privileged and/or attorney work product for the sole use of the intended recipient. Any unauthorized review, use, or distribution is prohibited and may be unlawful.

SDG+Es Franchise

ORDINANCE NO. 3207 (NEW SERIES)

AN ORDINANCE GRANTING TO THE SAN DIEGO GAS & ELECTRIC COMPANY, A CORPORATION, AND TO ITS SUCCESSORS AND ASSIGNS, A FRANCHISE TO CONSTRUCT POLES, WIRES, CONDUITS AND APPURTENANCES FOR THE PURPOSE OF TRANSMITTING, DISTRIBUTING AND SUPPLYING ELECTRICITY FOR LIGHT, HEAT, POWER AND OTHER LAWFUL PURPOSES ALONG OR UPON ANY PUBLIC HIGHWAY IN THE COUNTY OF SAN DIEGO

The Board of Supervisors of the County of San Diego do ordain as follows:

Section 1. GRANT OF FRANCHISE

There is hereby granted to the San Diego Gas & Electric Company, a corporation, hereinafter called the grantee, a franchise to erect, install, construct, operate, maintain, repair, reconstruct, replace, retain, use and/or remove an electric distribution and transmission system consisting of one or more electric conductors together with necessary supporting, containing and protective structures such as poles, cables, conduits, ducts, vaults, guys, stubs, platforms, anchors, crossarms, braces, towers, insulators, transformers, switches, meters, cut-outs, appliances, attachments, wires or other structures and necessary appurtenances, hereinafter called the franchised property, in, along, or upon the surface of, and the space above and below any and all public roads, streets, freeways, lanes, alleys, courts, sidewalks, parkways, drives, boulevards, highways, avenues, easements and other public ways subject to the franchise authority of the Board within the County of San Diego, hereinafter collectively called highway or highways, in said county and outside of the boundaries of any incorporated municipality within said county, for the purpose of transmitting, distributing, and supplying electricity for light, heat, power, and other lawful purposes. This franchise is the renewal of a right already in existence.

Section 2. TERM

The term of this franchise shall commence with the effective date hereof, and continue and remain in full force and effect until such time as grantee shall surrender or abandon same or this franchise shall be forfeited for noncompliance by the grantee in accordance with its terms, or the State of California, County, or other public corporation thereunto duly authorized, shall purchase by voluntary agreement or shall condemn and take under the power of eminent domain in accordance with then existing law all property actually used and useful in the exercise of this franchise situate within the unincorporated area of the County of San Diego.

Section 3. CONDITIONS OF FRANCHISE

This franchise is granted subject to the following terms and conditions:

(a) This franchise shall not be transferred in whole or in part and it is not to be sold, transferred, leased, assigned, or disposed of in whole or in part by forced sale, merger, consolidation, or otherwise without consent of the Board of Supervisors of the County of San Diego, hereinafter called the Board, expressed by ordinance and then only under such terms and conditions as may be therein prescribed, which consent shall not unreasonably be withheld; provided, however, that no such consent shall be required for any transfer, as a whole, in trust or by way of mortgage or other hypothecation, to secure an indebtedness heretofore or hereafter incurred by grantee.

(b) In constructing, installing, repairing and maintaining the franchised property, the grantee shall conform to the statutes of the State of California and the orders of the California Public Utilities Commission, and to the ordinances of the County of San Diego insofar as they do not conflict with such statutes and orders.

(c) The grantee shall, at its own expense, and promptly upon notice from the Board or its authorized representative, protect, support, temporarily disconnect, relocate or remove any elements of the franchised property when required by the Board or its authorized representative or representatives by reason of traffic conditions, public safety, change or establishment of grade or alignment, operation, maintenance, repair, widening, alteration or relocation of any highway, or the construction of any public improvement or structure, and the Board reserves the right to change the grade, to change the width, or to alter or change the location of any highway over which this franchise is granted. The foregoing provision does not authorize the Board or its representative or representatives to require the grantee to underground any elements of the franchised property which are located above ground as a part of any direction to relocate such elements, but the grantee in its discretion may do so.

(d) All portions of any highways which have been excavated, altered or changed by the grantee by reason of the construction, installation, removal, relocation, or maintenance of any element of said franchised property shall be placed in as good condition as the same existed prior to such construction, installation, removal, relocation or maintenance and to the satisfaction of the Board or its authorized representative or representatives.

(e) Upon any failure of the grantee, after the giving of thirty (30) days' prior notice by the Board or its representative, to commence, pursue and complete any work required of it by law or by the provisions of this franchise in any highway the Board, at its option and according to law, may cause such work to be performed and completed and the grantee shall pay to the County of San Diego the cost thereof in the itemized amounts reported by the Board or its authorized representatives to the grantee,

within sixty (60) days after the receipt of such itemized report.

(f) This franchise does not relieve the grantee of any requirements imposed by the laws, rules or regulations of the State of California or any agency thereof and/or such reasonable ordinances, rules, or regulations now in force or hereafter prescribed by the Board which are not in conflict with said state laws, rules or regulations.

(g) The grantee waives any and all claims for damages against the County of San Diego caused by reason of any grading, paving, sewerage or the construction of any public improvement in, on or over any highway or any alteration, maintenance or repair of any highway provided County gives grantee not less than thirty (30) days' notice in writing of such proposed grading, paving, sewerage or construction in the event franchised property would be affected thereby.

(h) The grantee agrees to indemnify the County of San Diego, its officers, agents and employees, against all claims, demands, actions, suits and proceedings by others, and against all liabilities to others and against any loss, cost and/or expense resulting therefrom arising out of the exercise and enjoyment of this franchise, except such claims, demands and liabilities which arise from the negligent or intentional acts or omissions of County, its officers, agents and employees.

(i) In the event grantee should neglect or willfully fail or refuse to comply with any of the conditions of this franchise, the County shall give grantee a thirty (30) days' notice in writing of the conditions violated. In the event grantee shall not comply with such notice to correct or cure the violations, the Board, at its election, may declare this franchise forfeited and all rights accruing hereunder shall thereupon terminate.

(j) In the event the use of any element of the franchised

property is permanently discontinued, the grantee shall promptly remove such element unless the Board has expressly authorized such element to be abandoned in place. Upon authorized abandonment of any element or elements in place, the grantee shall deliver to the Board an instrument, satisfactory to the County Counsel of the County of San Diego, transferring to said county the ownership of such element or elements of the franchised property.

Section 4. FRANCHISE PAYMENT

The grantee and its successors or assigns, shall, during the term of this franchise, pay annually to the County of Sa. Diego 2% of the gross annual receipts of said grantee arising from the use, operation or possession of said franchise; provided, however, that such payment shall in no event be less than 1% of the gross annual receipts of grantee derived from the sale of electricity within the unincorporated limits of the County of San Diego, as evidenced by an annual report filed with the Board not later than March 31 of each year and verified by the oath of two legally authorized officers of grantee, its successors or assigns.

Section 5. EXAMINATION OF FRANCHISE FACILITIES AND RECORDS.

At all reasonable times the grantee shall permit any authorized representative of the Board to examine all franchised property of the grantee erected, constructed, laid, operated or maintained pursuant to this franchise, together with any appurtenant property of the grantee, and to examine and transcribe such books of account and other records pertaining to the method and computation of the franchise payment, and to examine and obtain copies of any papers, maps and other records which show the place, method and maintenance of the franchised property.

Section 6. INTERPRETATION OF FRANCHISE

The grantee accepts the franchise rights in highways under this franchise subject to the express obligation to relocate

its facilities therein at its own expense when necessary to make way for a proper governmental use of the highways, unless hereafter otherwise provided by statute or decision of a court of competent jurisdiction.

Section 7. COMMUNICATIONS CIRCUITS

The Board in granting this franchise expressly reserves, at no cost to the County of San Diego, the right and privilege of installing and maintaining four communication circuits upon any poles erected or placed by virtue of this franchise. It is expressly understood that grantee is not required by the reservation of this right and privilege to modify any of its existing franchised property or to construct or reconstruct any franchised property hereafter constructed or modified to accommodate any communication circuits for the County of San Diego, but the County of San Diego shall have the right and privilege of installing and maintaining not to exceed four communication circuits upon franchised property where and so long as the grantee determines that space is available for such purposes. The County of San Diego may use said circuits for maintaining a communication, control and/or fire alarm service for any purpose within the Board's functions. Grantee shall have no responsibility or liability for the installation, maintenance or operation of such circuits by the Board nor any responsibility either to avoid inductive interference or induced voltage in any such circuits or to maintain poles or conduits for the use of such circuits after grantee has no further use for them. The Board shall install and maintain such circuits in accordance with the standards of the California Public Utilities Commission current at the time of such installation and/or maintenance.

Section 8. INCLUSION OF UTILITY EASEMENT IN HIGHWAY

If any facilities of grantee at the time this franchise takes effect or at any time during the term of this franchise

are located in any easement or other property interest owned or occupied by the grantee on which is superimposed or which becomes a part of a highway during the term of this franchise, such easement or other property interest shall be included in the line mileage upon which the franchise payment to the County of San Diego is computed.

Section 9. EFFECTIVE DATE OF FRANCHISE

This franchise shall be effective on the 30th day after the adoption of this ordinance provided that the grantee has filed with the Board within 20 days after such adoption a written instrument accepting this franchise and agreeing to comply with all of its provisions.

Section 10. EFFECTIVE DATE OF ORDINANCE

This ordinance shall take effect and be in force 30 days after the date of its passage, and before the expiration of 15 days after its passage it shall be published once, with the names of the members voting for and against the same, in the Inland Empire Daily Californian, a newspaper of general circulation published in the County of San Diego.

PASSED, APPROVED, AND ADOPTED this 3rd day of June, 1968.

HENRY A. BONEY

Chairman of the Board of Supervisors of
the County of San Diego, State of California

The above ordinance was adopted by the following vote:

Supervisor Frank A. Gibson	voting "Aye"
Supervisor Henry A. Boney	voting "Aye"
Supervisor Robert C. Dent	being absent and not voting
Supervisor De Graff Austin	voting "Aye"
Supervisor Robert C. Cozens	voting "Aye"

ATTEST by hand and the seal of the Board of Supervisors this
5th day of June, 1968.

PORTER D. CREMANS
Clerk of the Board of Supervisors

(SEAL)

By Florinda Clark Deputy

EXPIRES DEC. 9, 1979

ORDINANCE NO. 347

AN ORDINANCE GRANTING TO THE SAN DIEGO CONSOLIDATED GAS & ELECTRIC COMPANY, A CORPORATION, AND TO ITS SUCCESSORS AND ASSIGNS, A FRANCHISE AND AUTHORITY TO LAY, CONSTRUCT, OPERATE, MAINTAIN, USE, REPAIR, REPLACE AND/OR REMOVE GAS PIPES IN SO MANY AND IN SUCH PARTS OF THE PUBLIC HIGHWAYS, STREETS AND ROADS OF THE COUNTY OF SAN DIEGO AS THE GRANTEE OF SAID RIGHT, PRIVILEGE AND FRANCHISE MAY ELECT TO USE FOR THE PURPOSE OF USING SUCH GAS PIPE LINES FOR THE PURPOSE OF TRANSMITTING, CONVEYING, DISTRIBUTING AND SUPPLYING NATURAL AND/OR ARTIFICIAL GAS TO THE PUBLIC FOR LIGHT, HEAT, POWER AND ALL LAWFUL PURPOSES, TOGETHER WITH THE RIGHT TO TRANSPORT NATURAL AND/OR ARTIFICIAL GAS IN AND THROUGH ANY SUCH PIPE LINES CONSTRUCTED UNDER THIS FRANCHISE.

WHEREAS, the San Diego Consolidated Gas & Electric Company, a corporation, on the 22nd day of October, 1929 filed its application for the franchise and authority to lay, construct, operate, maintain, use, repair, replace and/or remove gas pipe lines in so many and in such parts of the public highways, streets and roads of the County of San Diego as the grantee of said right, privilege and franchise may elect to use for the purpose of using such gas pipe lines for the purpose of transmitting, conveying, distributing and supplying natural and/or artificial gas to the public for light, heat, power and all lawful purposes, together with the right to transport natural and/or artificial gas through any such pipe lines constructed under said franchise, for the term of fifty (50) years and upon the terms and conditions set out in said application; and

WHEREAS, the Board of Supervisors of the County of San Diego by its resolution adopted on the 4th day of November, 1929, determined and proposed to grant such franchise and authority as applied for in said application, together with a statement that it was proposed to grant the said franchise and authority as applied for, and that bids will be received therefor, and that it would be sold, struck off and awarded to the highest cash bidder therefor; and

WHEREAS, notice of said application has been regularly and duly published and advertised as directed by said Board of Supervisors and as required by law; and

WHEREAS, the full publication of said notice has been completed and not less than twenty (20) days nor more than thirty (30) days have elapsed since the completion of said publication; and

WHEREAS, on Monday, the 9th day of December, 1929, at the hour of eleven o'clock A.M. of that day (being the day and date and time set by said notice for the opening of all sealed bids for said franchise and authority) the sealed bid of San Diego Consolidated Gas & Electric Company was in open session opened and publicly declared, and there being no other sealed bid or any oral or other bid made at the time of the opening of said sealed bid or at all, and the sealed bid of said San Diego Consolidated Gas & Electric Company being the highest cash bid for said franchise and authority, the same was at said time and place so declared and the said San Diego Consolidated Gas & Electric Company was then and there declared to be the highest bidder for said franchise and authority by said Board of Supervisors and said franchise was then and there struck off, sold and awarded to said San Diego Consolidated Gas & Electric Company; and

WHEREAS, the bond required to be given by the said successful bidder as set forth in the advertisement for bids in the sum of One thousand (\$1,000.00) Dollars has been given and approved by said Board of Supervisors; and

WHEREAS, all acts and things essential to the due, proper and legal authorization of this grant of said franchise and authority have been done by the said Board of Supervisors of the County of San Diego and the said San Diego Consolidated Gas & Electric Company, grantee, in due and proper time, form and manner;

NOW, THEREFORE, the Board of Supervisors of the County of San Diego do ordain as follows:

Section One: There is hereby granted to the San Diego Consolidated Gas & Electric Company a franchise and authority to lay, construct, operate, maintain, use, repair, replace and/or remove gas pipe lines in so many and in such parts of the public highways, streets and roads of the County of San Diego as said San Diego Consolidated Gas & Electric Company may elect to use for the purpose of using such gas pipe lines for the purpose of transmitting, conveying, distributing and supplying natural and/or artificial gas to the public for light, heat, power and all lawful purposes, together with the right to transport natural and/or artificial gas in and through any such pipe lines so constructed outside of the boundaries of any incorporated municipality within said county.

Section Two: Said franchise is hereby granted for the term of fifty (50) years from and after the date of the taking effect of this ordinance.

Section Three: Said franchise is granted upon the following terms and conditions, to-wit:

(1) The work of laying, operating and maintaining gas pipes and conduits for the purpose of carrying gas for light, heat, power and all other lawful purposes and distributing and supplying natural and/or artificial gas to the public and to exercise any other privilege whatever under the terms of this franchise, shall be commenced in good faith within not more than four months from the date of the taking effect of this ordinance granting said franchise, and if not so commenced within said time, said franchise so granted shall be declared forfeited.

(2) That the grantee of such franchise shall not sell, transfer or otherwise dispose of the same without the consent of the Board of Supervisors of said County of San Diego; and in case said grantee shall attempt to sell, transfer or otherwise dispose of said franchise without such consent, it shall be thereby forfeited and all rights accruing thereunder shall lapse.

(3) The grantee of this franchise and its successors and assigns shall have the right to lay, construct, operate, maintain, use, repair, replace and/or remove such gas pipe lines and traps, manholes, appliances and attachments as may be necessary to properly maintain gas pipe lines and service connections. Said traps, manholes, appliances and attachments shall at all times be kept flush with the surface of the roads upon which the same are so constructed and laid, and so located as to conform to any order of the Board of Supervisors in regard thereto and not to interfere with the use of the streets for highway purposes. Said grantee and its successors and assigns shall also have the right, subject to such regulations as are now or may hereafter be in force, to make all necessary excavations in any of said public highways, streets and roads of the County of San Diego for the laying, construction, repairing, operation, maintenance and replacement and/or removal of said gas pipe lines, traps, manholes, appliances and attachments. All gas pipes, traps, manholes, attachments and appliances constructed or maintained under the provisions of this franchise shall be constructed and maintained in accordance and in conformity with all the laws of the State of California, and such reasonable ordinances, rules and regulations now in force or hereafter adopted or prescribed by the Board of Supervisors of the County of San Diego.

(4) All portions of the streets or highways which have been excavated or otherwise injured in the construction and laying of said gas pipe lines shall be placed in as good condition as the same were in before the constructing, laying, repairing or removing of any such gas pipes, trap, manhole, attachment, or appliance, and to the satisfaction of the Board of Supervisors of the County of San Diego.

(5) The grantee and its successors or assigns shall waive any and all claims for damages against the said County caused by reason of any grading, sewerage, paving, macadamizing or otherwise improving, altering or repairing any of said public highways, streets or roads.

(6) The grantee of this franchise and its successors and assigns shall have the right during the period for which this franchise is granted, to use the said public highways, streets and roads as hereinabove stated for the purpose of operating and maintaining such gas pipes and conduits for transmitting, conveying, distributing and supplying natural and/or artificial gas to the public for light, heat, power and all lawful purposes, and also the right to transport natural and/or artificial gas in and through any such pipe lines constructed under this franchise.

Section Four: Said San Diego Consolidated Gas & Electric Company shall during the life of this franchise pay to the County of San Diego two (2%) per cent of the gross annual receipts arising from the use, operation or possession of said franchise. No percentage shall be paid, however, for the first five (5) years succeeding the date of this franchise, but thereafter such percentage shall be payable annually and in the event said payment is not made, said franchise shall be forfeited.

Section Five: This ordinance shall take effect thirty-one days after its passage; and before the expiration of fifteen days after the passage of this ordinance, it shall be published with the names of the members voting for and against the same for at least one week in the San Diego Union, a newspaper published in said County of San Diego.

Signed by the Chairman of said Board of Supervisors this 9th day of December, 1929.

Chas. L. Good /s/
Chairman of the Board of Supervisors

And Attested by the Clerk of this Board, this 9th day of December, 1929.

J. B. Mc Lees /s/
Clerk of said Board of Supervisors
By C. Buckley, Deputy

Names of Supervisors voting for said Franchise:

Edgar I. Hastings /s/
E. A. Hornbeck /s/
L. H. Aul /s/
Chas. L. Good /s/
Tom Hurley /s/

Names of Supervisors Voting Against the same:

None